



Comptroller General
of the United States

Washington, D.C. 20548

D. McARTHUR

Decision

Matter of: Suncoast Scientific Incorporated

File: B-240689

Date: December 10, 1990

L. Stephen Fikar for the protester.
Virginia W. Haddad, Esq., Department of the Air Force, for the agency.
C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Evaluators reasonably found that protester's proposed staffing plan and relocation/phase-in plan, while acceptable contained a moderate to high element of risk where protester failed to submit evidence of firm commitment of incumbent's expert employees to accept employment with the protester as contemplated and proposed by the protester.

2. Where record shows that evaluation panel advised source selection official correctly of relative advantages and disadvantages of the protester's proposal, including potential cost savings substantiated in offer, official could nevertheless reasonably determine that awardee's technical superiority outweighed such savings, and award to higher-priced, higher-rated offeror was proper.

3. Where agency removed individual from evaluation panel, based on potential conflict of interest, and reviewed and removed that individual's ratings from the evaluation result there is no basis for finding that evaluation was biased against protester.

DECISION

Suncoast Scientific Incorporated (SSI) protests the award of contract under request for proposals (RFP) No. F08635-90-R-0160, issued by the Department of the Air Force. The protester contends that the agency improperly evaluated its proposal.

We deny the protest in part and dismiss it in part.

BACKGROUND

On February 26, 1990, the agency issued the solicitation for a cost-plus-fixed-fee contract for the production, updating and maintenance of Joint Munitions Effectiveness Manuals (JMEM) for the Air Force Development Test Center. Published under the auspices of the Department of Defense logistics commanders, the manuals provide real time nonnuclear munitions effectiveness information for operational commanders and planners; the agency estimates that a contractor may have as many as 50 manuals in revision at any one time.

The RFP required that proposals be submitted in four volumes, including the administrative proposal, technical/management proposal, cost/price proposal and past performance. The solicitation, in pertinent part, directed offerors to describe the experience and qualification of proposed personnel, highlighting the major qualifications of key personnel and providing resumes of key technical supervisors. The RFP specifically advised that offerors would have to justify any proposal with manning levels different from current levels, or the agency would downgrade their proposals; the evaluation would also consider each offeror's "approach to staffing."

Offerors other than the incumbent had to provide a relocation/phase-in plan for the first 45 days of performance, by which time the agency expected the selected contractor to assume all contract responsibilities and obligations, with all key personnel in place. In the plan, offerors were to identify and discuss critical management and technical actions required and time phasing, including obtaining security clearances for new personnel and assumption of ongoing tasking, providing for an orderly transition of task acceptance and accomplishment, with emphasis on minimizing interruption. The statement of work required all personnel to possess a SECRET clearance. Evaluators would consider whether the plan was adequate to accomplish the proposed baseline level of effort.

The solicitation advised offerors that the agency would make a "detailed evaluation" of each proposal and provide the results to the Source Selection Authority (SSA). The evaluation would consider factors such as schedule realism and level of experience in similar contracts; the RFP warned offerors that any proposal appearing unrealistic in terms of technical, cost or schedule commitments would be viewed as reflecting a lack of understanding of the complexity and risks inherent in the tasking.

The solicitation provided for award to that offeror whose proposal was most advantageous to the government, based on price competition, but with "paramount consideration" given to

technical/management factors. Technical/management factors included JMEM Experience and Understanding, Personnel Qualifications and Sufficient Manpower, Publications and Computer Qualifications, Facilities, Sample Special Task,^{1/} Relocation/Phase-In Plan, and Data Management. For each technical/management factor, the agency would assess proposals against the criteria of Compliance with Requirements, Soundness of Approach and Understanding the Problem.

The agency received two proposals on April 9, 1990, one from the protester and one from the incumbent, Oklahoma State University. The agency performed an initial evaluation of proposals and upon learning from the protester that its program manager had a potential conflict of interest,^{2/} removed him from the evaluation panel and reviewed the evaluation results for evidence of bias. After holding discussions with the two offerors, the agency requested them to submit best and final offers (BAFO), which the agency received on June 20.

The evaluation panel reviewed the BAFOs and provided the results of their review to the SSA, who made the determination that despite the protester's lower proposed price of \$7,736,298, nearly \$2.7 million less than the incumbent's proposed price, the risks of the protester's proposal and the technical superiority of the incumbent made the latter's proposal most advantageous to the government. Accordingly, the agency awarded a contract to Oklahoma State University on July 27.

On August 1, the agency provided a technical debriefing for the protester. At the debriefing, the agency advised the protester of the weaknesses that it believed existed in the protester's proposal, as well as other areas in which its presentation might have been improved. The agency advised the protester that among other weaknesses, the protester's proposal lacked a firm commitment from incumbent personnel, upon whom the protester was relying for technical expertise, to accept employment from the protester.

The agency also advised the protester that it had not included in its cost evaluation the value of government-furnished

^{1/} The agency attached the sample special task to the solicitation, which generally described the points that the agency expected offerors to cover in their solutions, emphasizing the rationale employed and the methodology utilized.

^{2/} The program manager's niece worked for the incumbent contractor and eventual awardee, Oklahoma State University.

equipment/material that the protester claimed as a cost savings/avoidance, although the evaluation panel had advised the source selection official that the protester's proposed use of an automated publishing system could result in lower material costs, particularly for photographic paper and chemicals. After the debriefing, SSI filed this protest.

PROPOSAL EVALUATION

The protester contends that the agency improperly assigned higher risk to its proposal, based on the agency's lack of confidence in the protester's ability to hire incumbent personnel as described in its proposal. The protester asserts that it has performed satisfactorily in the past and that there is no basis upon which to doubt its integrity. Furthermore, the protester argues, the agency was well aware of the protester's reasons for not providing information on incumbent personnel whom it might wish to hire--the fear that the incumbent might take reprisals against these personnel. The protester contends that, as a practical matter, incumbent personnel will have little option but to accept employment with SSI, since the local labor market is very tight.

The agency acknowledges that it received favorable comments relative to the protester's past performance, although as prime and subcontractor, SSI's previous contract experience had amounted to less than a tenth of the anticipated value of the instant procurement. The agency denies having any questions about SSI's integrity, but notes that the protester did have little in-house expertise on munitions effectiveness, a factor that in the agency's view made the success of its effort heavily dependent on its ability to hire current employees of the incumbent. In this respect, the agency believed that the protester's phone survey of incumbent personnel, which did not address the protester's plans to offer reduced wages and benefits, was not adequate to reduce the risk that the protester might not in fact be able to hire a substantial number of incumbent personnel, particularly those with the greatest technical and professional expertise.

In reviewing protests of an allegedly improper evaluation, our Office will examine the record to determine whether the agency's judgment was reasonable and in accordance with the listed criteria and whether there were any violations of procurement statutes or regulations. McCollum and Assocs., B-232221, Nov. 10, 1988, 88-2 CPD ¶ 470. The consideration of the risk involved in an offeror's approach is inherent in the evaluation of technical proposals. Honeywell, Inc., B-238184, Apr. 30, 1990, 90-1 CPD ¶ 435.

The record before us does show that as far as the evaluators were concerned, the acceptability of the protester's proposal

depended on its ability to hire incumbent personnel, since SSI proposed no other source of experienced personnel. The agency so advised the protester during discussions. Furthermore, beyond broad statements, the protester had not justified certain proposed personnel reductions as required by the RFP. Should the incumbent personnel not accept employment with the protester, the evaluators found that the protester's alternate plan to hire new personnel at reduced wages would not provide it with the essential expertise to perform the required work and that acceptance of the protester's proposal therefore presented a risk that the agency would not obtain satisfactory, timely performance.

We do not find that the agency was unreasonable in hesitating to accept the results of a cursory telephone survey, which did not address wages or benefits, as an accurate reflection of the protester's ability to attract incumbent employees. Indeed, it appears that the basis for the protester's belief that it could hire the incumbent's personnel lay in its assumption, about which the agency had doubts, that the local economy was so bad and would remain so bad that incumbent employees would have no choice. Certainly, the agency felt there was little incentive for the protester to offer higher wages, if its assumptions proved incorrect, as the protester appeared to prefer its less expensive plan of hiring new personnel.

We do not find it unreasonable for the agency to assign the protester's proposal a moderate to high degree of risk in this regard. The solicitation clearly provided for the consideration of such risk in evaluating proposals and set forth the information to be provided in the area of personnel qualifications and manpower; while the agency may have accepted the protester's reasons for not providing that information, we find it reasonable for evaluators to advise the SSA that such a proposal presented more risk and was less desirable than one that provided firm commitments from experienced personnel.

The protester also alleges that the debriefing identified a number of weaknesses that were not actual weaknesses or were factually incorrect. The protester states that it provided or could have provided information to refute certain perceived weaknesses such as its alleged failure to demonstrate experience in using the proposed cost and status reporting system and what evaluators believed to be an optimistic equipment ordering and delivery schedule. The protester argues that the agency could have obtained the necessary backup information from its suppliers, from its customers, and from other government agencies, if the agency did not "believe" the protester.

The record establishes that many of the issues discussed at the debriefing were no more than trivial factors in the selection decision, which were, according to the agency, provided for the purpose of helping the protester to improve its future proposals. To the extent these issues related to substantive concerns, our review of the record shows that the agency had raised them with the protester, at least to the extent of alerting the protester to the weaknesses in its proposal. We also note that a technical evaluation must be based on the information submitted with the proposal, and we cannot find that the agency was unreasonable in declining to call suppliers, customers and other agencies to flesh out the detail lacking in the protester's proposal as submitted. See Madison Servs., Inc., B-236776, Nov. 17, 1989, 89-2 CPD ¶ 475.

SOURCE SELECTION AUTHORITY BRIEFING

The protester contends that the evaluation team gave incorrect information to the SSA, by failing to advise the SSA of cost savings/avoidances proposed by SSI and by advising the SSA incorrectly that the protester did not have a facility clearance at the time of award. The protester states that under Federal Acquisition Regulation (FAR) Part 45.2 (FAC 84-33), the agency was obligated to adjust offers to reflect the protester's proposed reduction in use of government-furnished equipment. The protester contends that the agency therefore failed to provide the SSA with a "detailed evaluation" of its proposal as the RFP required, preventing that individual from making a decision in the best interests of the government.

The solicitation provided a list of government-furnished equipment and materials that the agency would make available to the successful offeror; the protester proposed use of a desktop publishing system that would have eliminated the need to use some of this equipment and material. The evidence submitted by the protester shows that in early April, the protester and the agency both met and exchanged correspondence, by which the agency expressly declined to consider such factors in its evaluation. Furthermore, the record before us indicates that the evaluation team did advise the SSA that the protester's proposal would result in cost savings, although the team did not accept the estimates that the protester provided or use the protester's figures in its cost evaluation. We find that, as the agency points out, the solicitation made no provision for the use of government-furnished equipment as an evaluation factor. FAR Part 45.2 is clearly limited to situations where the agency must quantify the advantage accruing to one offeror who possesses government-furnished equipment, in order to allow offerors to compete on a common basis; it does not apply to the instant situation where the equipment is offered to all potential contractors and there is no need to equalize the possible advantage.

From the record before us, it also appears that the awardee proposed a similar system, a factor that the protester has not taken into account in computing its cost advantage. Regarding certain other savings that the protester has requested our Office not to divulge, the agency requested the protester to provide data and analysis in support of its estimates; the agency concluded that the protester's responses failed to establish the claimed savings. We have reviewed the discussion questions and the protester's responses, and we conclude that the agency's doubts regarding these savings were reasonable. Accordingly, we find the agency properly did not adjust the protester's offered price to reflect the claimed unsupported savings.

We find no merit to the protester's assertion that evaluators misled the SSA concerning its security clearances. We have reviewed the briefing documents provided to our Office, and they appear to state only what was true--that of 32 proposed personnel, only 4 had security clearances and had committed themselves to work for the protester. In accepting the protester's proposal, the evaluation team advised the SSA that he would run the risk that the protester might be unsuccessful in hiring incumbent personnel and that if as proposed by SSI, the protester resorted to hiring personnel without clearances, it would take nearly the entire relocation period, 42 of 45 days by the protester's own figures, just to obtain the clearances. This situation would in turn create a high risk that the protester could not assume its obligations and take over the ongoing work by the scheduled start date. Regarding the protester's facility clearance, the record shows that 3 days prior to the SSA briefing the Defense Investigative Service (DIS) advised the agency that SSI had only an interim secret clearance with no safeguarding capabilities. Although the protester contends that it did have a clearance and that DIS files should have reflected this fact, we have no basis in the record to find that the agency failed to discharge its obligation in this regard; in any event, whatever the status of the protester's facility clearance, we believe that the agency's principal concern lay with the lack of personnel clearances if the protester could not hire incumbent personnel, which remained a moderate to high risk to timely performance.

BIAS

The protester argues that the agency treated it unfairly in the evaluation process, in that the agency's program manager had a conflict of interest that biased the evaluation and that the agency designed the solicitation to favor the incumbent. The protester states that the agency did not remove the project manager from the evaluation team until after the

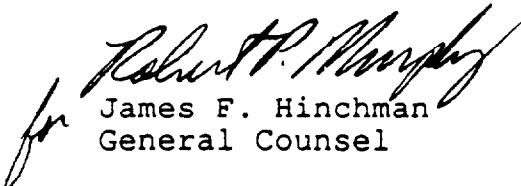
initial evaluation and alleges that the agency took no steps to insure that the evaluation did not reflect the bias of the program manager. The protester also believes that two of the RFP evaluation factors--the 45-day relocation period and the sample task--favored the incumbent.

Regarding the project manager, the agency advises our Office that in order to avoid any appearance of impropriety, it removed the project manager from the evaluation team and reviewed the evaluation results; except for weaknesses confirmed through the comments of other team members, the agency eliminated all mention of any weaknesses noted by the project manager from the evaluation results briefed to the SSA. Our review of the evaluation results reveals no evidence that the evaluation gave an unfair picture of the protester's proposal or prevented the SSA from gaining an appreciation of the relative merits of proposals.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990), protests based upon solicitation improprieties apparent prior to the date for receipt of initial proposals must be filed prior to that date. To the extent the protester believes that the agency improperly employed certain evaluation factors--the sample task and the relocation plan--which appeared in the RFP as issued, its protest is untimely.

As additional issues, the protester argues that the agency should have referred any question as to the credibility of its proposal to the Small Business Administration (SBA) for issuance of a certificate of competency. We find, however, that it was the merit of the protester's proposal, specifically the risks involved, that caused the agency concern, and not the firm's responsibility; in such circumstances, referral to the SBA is not required. TM Sys., Inc., B-236708, Dec. 21, 1989, 89-2 CPD ¶ 577. The protester also contends that the agency violated FAR § 15.1001(a) (FAC 84-58), which requires agencies to provide prompt notification of award to unsuccessful offerors. The protester mistakenly believes that it was entitled to notice on June 29, after the SSA briefing and decision; the actual notice, issued on July 27, the date of award, was timely.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel